



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE HOOPA VALLEY)	NO. C-82-5903-MHP
TRIBE, et al.)	
)	
Plaintiffs,)	
)	
vs.)	
)	
RICHARD NEVINS, et al.,)	
)	
Defendants,)	MEMORANDUM
)	DECISION AND
and)	ORDER
)	
H. WESTBROOK, III and)	
R.L. WESTBROOK, d/b/a)	
RESERVATION RANCH,)	
et al.,)	
)	
Defendants and)	
Cross-)	
Defendants)	
)	

Plaintiffs brought this action in October 1982 against the California State Board of Equalization, five individual members of the Board, and the State of California, challenging the application of state statutes taxing timber harvested on tribal land. Plaintiffs sought partial summary judgment on both preemption and tribal sovereignty grounds. In June 1984, the court granted plaintiffs' motion on preemption grounds. The United States Court of Appeals for the Ninth Circuit has since held that

preemption of state law under the supremacy clause will not support a claim of attorneys' fees under 42 U.S.C. § 1988. White Mountain Apache Tribe v. Williams, 810 F.2d 844, 850 (9th Cir. 1984).^{1/} Plaintiffs are now before this court on a renewed motion for summary judgment under Fed. R. Civ. P. Rule 56(c) and on their motion for section 1988 attorneys' fees. They seek adjudication of the tribal sovereignty issue in order to qualify for attorneys' fees. In the alternative, they request the court to find that the tribal sovereignty claim constitutes a substantial but unadjudicated claim for purposes of obtaining attorneys' fees under section 1988. Upon careful consideration of the memoranda and accompanying documents filed both in support of and in opposition to the motions, the pleadings on file herein and counsels' arguments before this court, the court denies plaintiffs' motions for summary judgment and attorneys' fees for the reasons set forth below.

Background

Plaintiffs originally brought this action on October 26, 1982, challenging application of the timber yield tax and the timber reserve fund tax established by the 1976 California Forest Taxation Reform Act (Cal. Rev. & Tax. Code §§ 38101-38908). Specifically, plaintiffs claimed that application of the taxing statutes and regulations was an unconstitutional burden on Indian commerce which violated the supremacy clause, United States Constitution, art. I, § 8, cl. 3, as well as 25 U.S.C. §§ 405-407 and 25 C.F.R. § 163 (1982). They further claimed that such application violated their tribal sovereignty and infringed upon their right to self-

^{1/} Williams was originally cited as 798 F.2d 1205. That decision was withdrawn after a series of rehearings. The original holding, however, appears intact in the final decision.

government, violated various California laws, and deprived them of their rights, privileges, and immunities in violation of 42 U.S.C. § 1983.

Plaintiffs moved for summary judgment on federal preemption and infringement of tribal sovereignty grounds. On July 6, 1984, this court granted plaintiffs' motion for partial summary judgment. Hoopa Valley Tribe v. Nevins, 590 F. Supp. 198 (N.D. Cal. 1984). Because the court concluded that the state taxing statute was preempted by federal law, it did not reach the issue of tribal sovereignty. Id. at 199.

Meanwhile, on February 7, 1984, the Ninth Circuit held that preemption of state law under the supremacy clause generally will not support an action under section 1983, and therefore will not support a claim of attorneys' fees under 42 U.S.C. § 1988, the Civil Rights Attorneys' Fees Award Act of 1976. White Mountain Apache Tribe v. Williams, 810 F.2d at 850. On June 23, 1986, plaintiffs, in an effort to preserve an attorneys' fees claim, moved to amend their complaint to clarify that a section 1983 cause of action not based on preemption was asserted in the original complaint. On August 1, 1986, this court denied the motion to amend the section 1983 claims, concluding that whether such a cause of action was asserted in the original complaint would best be decided by recourse to the original complaint.

On July 22, 1987, plaintiffs again moved for summary judgment and attorneys' fees pursuant to section 1988. They argue that they have sufficiently alleged a preemption claim, a tribal sovereignty claim, and a general tax immunity claim, at least one of which is cognizable under section 1983 and for which attorneys' fees are available under section 1988. Although the challenge to the state tax was adjudicated in 1984 on preemption grounds, plaintiffs request that summary judgment be granted on tribal sovereignty grounds. In the

alternative, they request that the court find that either the tribal sovereignty or the general tax immunity claim constitutes a substantial but unadjudicated claim for purposes of collecting attorneys' fees under section 1988, as provided for in Hagans v. Lavine, 415 U.S. 528 (1974).

Discussion

A. Summary Judgment

Although plaintiffs prevailed on their challenge to the California taxing statutes in July 1984, they seek to readjudicate that challenge on the basis of either tribal sovereignty or general tax immunity in order to qualify for attorneys' fees. Plaintiffs failed to raise or argue the general tax immunity claim in the original motions for summary judgment, and only briefly argued the tribal sovereignty claim at that time. Plaintiffs neglected to press further the tribal sovereignty claim or bring to this court's attention the problems associated with the Ninth Circuit's holding in Williams until three years after judgment on the merits. Both the defendants and this court understood damages to be the only remaining issue after this judgment.

Although plaintiffs did raise the tribal sovereignty claim before the present motion, their delayed efforts evoke a similar response to that of the Ninth Circuit in Williams. "[T]his is a case where the . . . claims were never pressed beyond the original federal complaint until they were dusted off for use in seeking a fee award under § 1988. 810 F.2d at 854. Plaintiffs have been awarded relief for violation of their substantive rights. This court will not now reach the merits of the tax immunity claim or the tribal sovereignty claim except as necessary to reach the issue discussed below.

B. Substantial Unadjudicated Claim

Plaintiffs argue that the tribal sovereignty claim is a substantial but unadjudicated claim cognizable under section 1983. Although Hagans does provide for attorneys' fees where substantial legal issues are raised but not adjudicated, plaintiffs are not eligible for fees because their claim is not cognizable under section 1983. 415 U.S. at 537-38. Section 1983 is a remedy for deprivations of rights secured by the United States Constitution or by some federal statute.^{2/} Plaintiffs acknowledged this at oral argument. The Ninth Circuit explained in Williams that "[s]ection 1983, as interpreted in Thiboutot and its progeny, enforces federal statutory rights only against direct violations of the federal statute in question." 810 F.2d at 851 n.9. The court held that the supremacy clause, which does not secure any federal rights, generally would not support an action under section 1983. Id. at 850.

Similarly, the Hoopa Tribe's right to self-government preceded, and therefore is not secured by, any federal statute or the Constitution. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 172 (1972). Plaintiffs argue that subsequent federal laws "protect" the right to self-government. Specifically, they argue that the Act of April 1864, 13 Stat. 39, and the Executive Order of June 23, 1876 created the Hoopa Indian reservation and implicitly secured the right to self-government. Plaintiffs, however, never alleged the violation of these laws in the complaint. Like

^{2/} "Every person who . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983 (emphasis added).

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the preemption claim in Williams, the tribal sovereignty claim is not premised on any federal statute, and is therefore not cognizable under section 1983.

Accordingly, plaintiffs' motions for summary judgment and for attorneys' fees are denied.

IT IS SO ORDERED.

Dated: OCT 6 - 1987

MARILYN HALL PATEL
United States District Judge

25 U.S.C. 407

§ 407. Sale of timber on unallotted lands.

Under regulations prescribed by the Secretary of the Interior, the timber on unallotted trust land in Indian reservations or on other land held in trust for tribes may be sold in accordance with the principles of sustained-yield management or to convert the land to a more desirable use. After deduction, if any, for administrative expenses under section 413 of this title, the proceeds of sale shall be used --

(1) as determined by the governing bodies of the tribes concerned and approved by the Secretary, or

(2) in the absence of such a governing body, as determined by the Secretary for the tribe concerned.

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25 U.S.C. § 1300i-7

§ 1300i-7. Hoopa Valley Tribe; Confirmation of Status.

The existing governing documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed.

42 U.S.C. § 1983

§ 1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulations, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1988

§ 1988. Proceedings in Vindication of Civil Rights; attorney's fees.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

